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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,758	12/09/2003	Timothy P. Clare	18,856	6550
23556 7590 01/08/2007 KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			EXAMINER POLLICOFF, STEVEN B	
			ART UNIT	PAPER NUMBER
			3728	
SHORTENED STATUTORY PERIOD OF RESPONSE		NOTIFICATION DATE	DELIVERY MODE	
3 MONTHS		01/08/2007	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 01/08/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/732,758	CLARE ET AL.	
	Examiner	Art Unit	
	Steven B. Pollicoff	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-20 and 22-43 is/are pending in the application.
- 4a) Of the above claim(s) 34-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-20, 22-33 and 38-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19,20 and 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Kelly et al., (US Pat 5,913,424).

With respect to claim 19 and 20, Kelly discloses a package insert, the package insert comprising; a base; and two opposed side walls (Kelly Fig 1 ref 18) extending from the base to define a generally U-shaped channel, each side wall extending from the base to a free edge (at ref 22) spaced from the base; and wherein each side wall of the insert includes a plurality of cut-outs (at 20) extending into the wall from the free edge thereof to form a plurality of truncated triangular shaped, evenly spaced-apart support ribs (22), such that the package insert is capable of being configured to receive a stack of flexible articles within the channel of the package insert and is further configured to be stacked vertically (Fig 1 and 2 generally) upon and beneath other such packages.

With respect to claims 26-28, Kelly as modified clearly discloses that the area defined by the at least one cut-out is greater than 10% and 20% of the total area of the

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insert (at least when compared to the figures of the present invention). Additionally, the Kelly cut-outs are capable of being about 30% of the total area of the insert.

Claims 30 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Rocchi et al., (US Pat 3,048,268).

With respect to claims 30 and 31, Rocchi discloses a blank (Rocchi Fig 3) for forming a package insert comprising: a base panel (Fig 1 ref 14) including a first side edge and a second side edge; a first side wall panel (composed of a plurality of flanges ref 16) joined to the first side edge, the first side wall panel comprising a free edge (22) spaced from the first side edge, and at least one cut-out (18,20) extending into the first side wall panel from the free edge thereof; and a second side wall panel (composed of a plurality of flanges ref 16) joined to the second side edge, the second side wall panel comprising a free edge (22) spaced from the second side edge of the base panel; and wherein the blank is configured to form an insert wherein each side wall of the insert includes a plurality of cut-outs (18,20) extending into the wall from the free edge thereof to form a plurality of evenly spaced-apart support ribs (16), such that the package insert is configured to receive a stack of flexible articles (26) within the channel of the package insert and is capable of being further configured to be stacked vertically upon and beneath other such packages.

With respect to claim 32, Rocchi discloses that the support ribs have the same shape as adjacent cut-outs (i.e. triangular ribs and triangular adjacent cut-outs).

With respect to claim 33, Rocchi is capable of having the cut-out area about 30% of the total area of the blank.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1,2,6 and 8-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly et al., (US Pat 5,913,424) in view of Hobbs (US Pat 3,650,395).

With respect to claims 1,2,6,12 and 18 Kelly discloses at least one package of flexible articles adapted to be stacked vertically upon and beneath other such packages, the package comprising: a plurality of flexible articles (Kelly Fig 1 ref 12); a structural insert (10) partially surrounding the flexible articles, the insert comprising a base and two opposed side walls (18) extending from the base to define a generally U-shaped channel for receiving the flexible articles, each side wall extending from the base to a free edge (at ref 22) spaced from the base; and wherein each sidewall of the insert

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includes a plurality of cut-outs (at 20) extending into the wall from the free edge thereof to form a plurality of truncated triangular shaped, even spaced-apart support ribs (22). Kelly does not disclose a flexible outer covering containing the insert and the flexible articles. However, Hobbs discloses a polymer film outer covering (Hobbs Fig 3 ref 12) compression wrapped around an insert (11) and flexible articles (see the bottles) to hold the articles securely in the insert. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the package of Kelly to include a flexible outer covering /shrink wrap, as taught by Hobbs, for the purpose of tightly and firmly hold the articles and insert together (column 2, lines 65-70).

With respect to claims 8-10, Kelly as modified clearly discloses that the area defined by the at least one cut-out is greater than 10% and 20% of the total area of the insert (at least when compared to the figures of the present invention). Additionally, the Kelly cut-outs are capable of being about 30% of the total area of the insert.

With respect to claim 11, while Kelly does not disclose that the insert is made from a corrugated board, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use corrugated board, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin 125 USPQ 416. Zietzschamm (US Pat 4,094,406) clearly discloses an insert made of paperboard.

With respect to claims 13-17, while Kelly as modified does not disclose that the flexible articles are disposable absorbent articles, training pants, infant diapers or

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feminine care products, the Kelly insert is certainly capable of holding an number of flexible articles including disposable absorbent articles, training pants, infant diapers and feminine care products.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly et al., (US Pat 5,913,424) in view of Hobbs (US Pat 3,650,395) as applied to claim 1 and further in view of Hammett (US D469,255).

With respect to claim 3, Kelly as modified does not disclose that each support rib has the same shape as an adjacent cut-out. However, Hammett discloses a beverage tray similar to Kelly's tray for holding bottles having support ribs the same shape as adjacent cut-outs (Fig 1 and 3). Therefore, it would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to modify the ribs and cut-outs of Kelly such that the ribs and cut-outs have the same shape, as seen in Hammett, since Applicant has not disclosed that having cut-outs and ribs the same shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the similarly shaped ribs and cut-outs as taught by Kelly.

With respect to claims 4 and 5, Kelly does not disclose that the support ribs are rectangular or triangular. However, it would have been an obvious matter of design choice to one having ordinary skill in the art at the time the invention was made to have rectangular or triangular shaped support ribs since such a modification would have involved a mere change in the shape of a component. A change in shape is generally

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recognized as being within the level of ordinary skill in the art. In re Dailey, 149 USPQ 47.

Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly et al., (US Pat 5,913,424) in view of Hammett (US D469,255).

With respect to claim 22, Kelly does not disclose that each support rib has the same shape as an adjacent cut-out. However, Hammett discloses a beverage tray similar to Kelly's tray for holding bottles having support ribs the same shape as adjacent cut-outs (Fig 1 and 3). Therefore, it would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to modify the ribs and cut-outs of Kelly such that the ribs and cut-outs have the same shape, as seen in Hammett, since Applicant has not disclosed that having cut-outs and ribs the same shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the similarly shaped ribs and cut-outs as taught by Kelly.

With respect to claims 23 and 24, Kelly does not disclose that the support ribs are rectangular or triangular. However, it would have been an obvious matter of design choice to one having ordinary skill in the art at the time the invention was made to have rectangular or triangular shaped support ribs since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. In re Dailey, 149 USPQ 47.

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With respect to claim 25, Kelly discloses that the support ribs are truncated triangles (Fig 1 at ref 22).

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly et al., (US Pat 5,913,424).

With respect to claim 29, while Kelly does not disclose that the insert is made from a corrugated board, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use corrugated board, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin 125 USPQ 416. Zietzschamm (US Pat 4,094,406) clearly discloses an insert made of paperboard.

Claims 38-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly et al., (US Pat 5,913,424) in view of Hobbs (US Pat 3,650,395) and Hammett (US D469,255).

With respect to claims 38,39 and 43, Kelly discloses at least one package of flexible articles adapted to be stacked vertically upon and beneath other such packages, the package comprising: a plurality of flexible articles (Kelly Fig 1 ref 12); a structural insert (10) partially surrounding the flexible articles, the insert comprising a base and two opposed side walls (18) extending from the base to define a generally U-shaped channel for receiving the flexible articles, each side wall extending from the base to a free edge (at ref 22) spaced from the base; and wherein each sidewall of the insert includes a plurality of cut-outs (at 20) extending into the wall from the free edge thereof

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to form a plurality of truncated triangular shaped, even spaced-apart support ribs (22).

Kelly does not disclose a flexible outer covering containing the insert and the flexible articles or that the free edges define an undulating pattern. However, Hobbs discloses a polymer film outer covering (Hobbs Fig 3 ref 12) compression wrapped around an insert (11) and flexible articles (see the bottles) to hold the articles securely in the insert. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the package of Kelly to include a flexible outer covering /shrink wrap, as taught by Hobbs, for the purpose of tightly and firmly hold the articles and insert together (column 2, lines 65-70). With respect to the free edges defining an undulating pattern, Hammett discloses free edges of a beverage tray defining an undulating pattern. Therefore, it would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to modify the free edges of Kelly such that they resemble an undulating pattern, as seen in Hammett, since Applicant has not disclosed that the undulating pattern solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the free edges as taught by Kelly.

With respect to claim 40, Kelly does not disclose that each support rib has the same shape as an adjacent cut-out. However, Hammett discloses a beverage tray similar to Kelly's tray for holding bottles having support ribs the same shape as adjacent cut-outs (Fig 1 and 3). Therefore, it would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to modify the ribs and cut-outs of Kelly such that the ribs and cut-outs have the same shape, as seen

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in Hammett, since Applicant has not disclosed that having cut-outs and ribs the same shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the similarly shaped ribs and cut-outs as taught by Kelly.

With respect to claims 41 and 42, Kelly does not disclose that the support ribs are rectangular or triangular. However, it would have been an obvious matter of design choice to one having ordinary skill in the art at the time the invention was made to have rectangular or triangular shaped support ribs since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. In re Dailey, 149 USPQ 47.

Response to Arguments

Applicant's arguments with respect to claims 1-6, 8-20, 22-33 and 38-43 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

4BP
SBP 12/21/06


Mickey Yu
Supervisory Patent Examiner
Group 3700

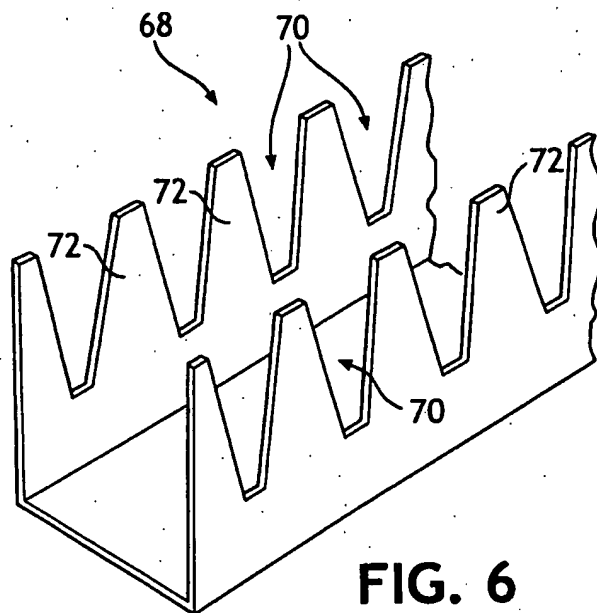
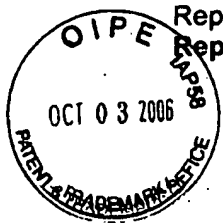


FIG. 6

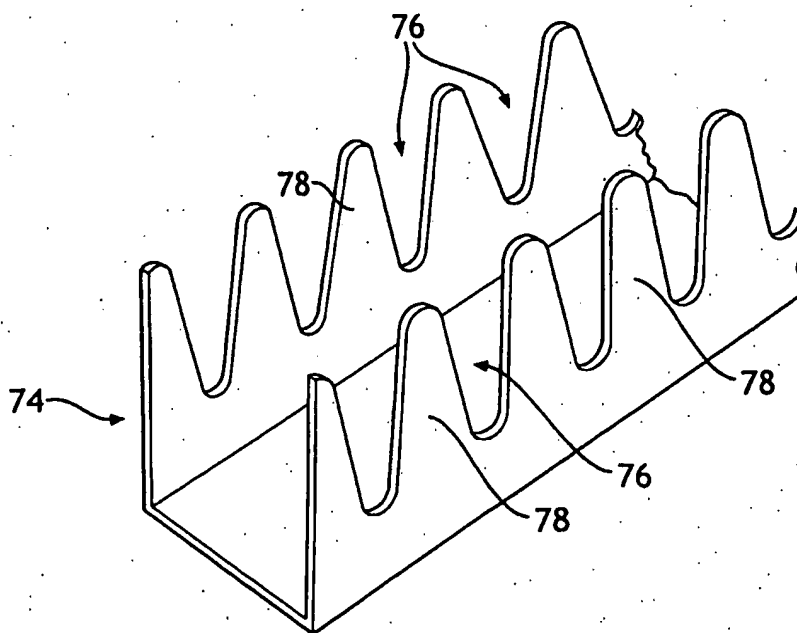


FIG. 7

APPROVED FOR ENTRY
SEP 12/21/06

Approved For Entry 4/29 12/21/06

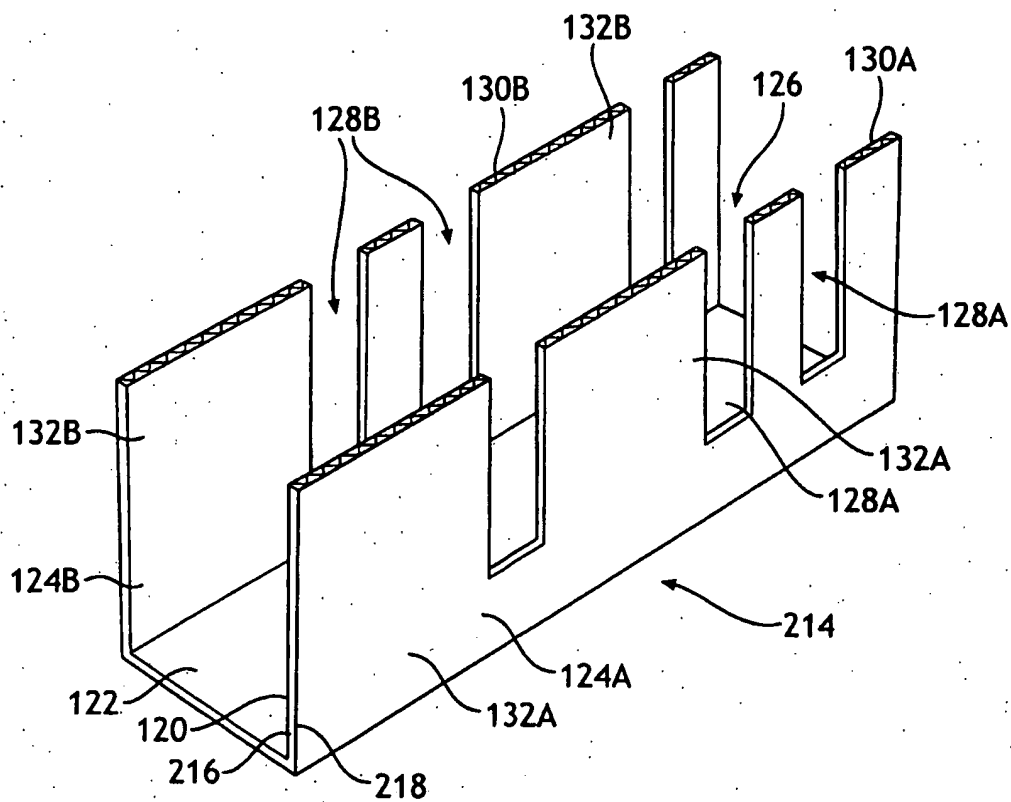


FIG. 10